Reno Hilton Resorts d/b/a Reno Hilton *and* International Union, United Plant Guard Workers of America. Case 32–CA–13618[1]

December 19, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN AND TRUESDALE

On August 18, 1994, Administrative Law Judge Jay R. Pollack issued the attached decision.[2] The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party filed answering briefs, and the General Counsel filed cross-exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[3] and conclusions, except as modified below, and to adopt the recommended Order as modified.[4]

1. The judge found the Respondent responsible for surveillance by employee Robert McLaughlin. McLaughlin attended one of the Union's meetings the day before the election and recorded the initials of other unit employees in attendance. The Respondent excepts and claims that McLaughlin merely attended the meeting in response to a blanket invitation to all unit employees; and it points to its witnesses' testimony that McLaughlin was not instructed to attend and that it received no feedback from him afterwards. We find that the record evidence fully warrants the judge's findings for the following reasons.

The credited evidence plainly establishes that the Respondent engaged in an extensive campaign of employee surveillance, both by supervisory personnel and employees who opposed the Union, who had either volunteered their services or were recruited by the Respondent as paid campaigners against the Union.[5] Thus, the judge found, from admissions and credited evidence, that these paid campaigners, either while in uniform and on duty or afterwards while dressed in street clothes, approached on-duty coworkers to persuade them to vote against the Union. They also compared notes with one another and with supervisors in an effort to ascertain who among the employees should be solicited to vote ''no,'' and who were the ''hard cases.'' The record shows that the Respondent increased these efforts substantially in the final weeks and days before the election, and even included the names of antiunion campaigners on daily assignment schedules as being assigned to special details. Consequently, the security staff was made fully aware of who was engaging in such campaign activity on behalf of the Respondent, by either the work assignment identifications or the increasing number of union discussions during their work shifts by out-of-uniform, off-duty security officers.[6]

It is clear from the record, and we therefore find, that those individuals, including McLaughlin, who were so engaged by the Respondent for pay, were acting as agents of the Respondent. We further find that McLaughlin, when he attended the union meeting and recorded the initials of all those in attendance, was acting within the scope of this agency relationship. In addition, there is unobjected-to testimony by Allison, an admitted fellow antiunion propagandist on the Respondent's payroll, that McLaughlin had admitted having given his list of attendees to Security Director Bennett after the union meeting. Further, the judge wholly discredited Bennett's denials that he ever discussed the matter with McLaughlin or saw McLaughlin's list. We accordingly conclude that the judge correctly characterized McLaughlin's conduct at the union meeting as surveillance activity by the Respondent.

[1] On August 15, 1995, the Board granted the Union's motion to sever the representation case, Case 32–RC–3777, from this proceeding and to remand it to the Regional Director.

[2] On August 23, 1994, the judge issued an erratum.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The General Counsel has excepted to the judge's failure to find that the Respondent violated Sec. 8(a)(1) by Supervisor Gilman's questioning employee Stauffer about how he would vote if the election were held that day, because it was an off-the-record conversation between friends and therefore not coercive. We find it unnecessary to pass on this complaint allegation because it is cumulative and would not affect the remedy.

[4] The Respondent has excepted to the judge's imposition of extraordinary remedies, arguing that the violations found by the judge are neither severe nor egregious. We find merit in the Respondent's exception and shall therefore delete those extraordinary remedial provisions from the judge's recommended Order.

We also find merit in the General Counsel's exceptions to the judge's failure to conclude that the Respondent committed additional 8(a)(1) violations based on the specific factual findings in his decision, namely that the Respondent solicited employees to campaign against the Union, that it solicited employee grievances and impliedly promised to remedy them, and that Respondent engaged in unlawful surveillance by Supervisor Gilman following union supporter Charles Fisher around the facility. We shall therefore modify the judge's recommended Order and notice accordingly.

[5] The judge, in rejecting the Respondent's contention that its paid employee campaigners were all volunteers, found that the Respondent recruited only Eric Johnson. We note, however, that he also credited employee John Allison's testimony showing that Robert Balentine, the Respondent 's security director's administrative assistant, recruited Allison to campaign against the Union and to keep a record of time in order to be paid.

[6] Security officers were ordinarily required to leave the hotel within 15 minutes after their shift ended.

2. The Respondent excepts to the judge's finding that the Respondent violated Section 8(a)(1) by selecting union organizing committee members Fisher, Fowler, McKinney, and Perrigo for frequent assignments to the outside tower guard post during the 2 weeks preceding the election, in an effort to restrict their union activity. The Respondent's exception argues that the judge failed to acknowledge the business necessity for staffing the outside tower during daylight hours prior to the election. It further asserts that there is no showing either that it targeted these particular guards for those assignments, or even that assignments to the outside tower inhibit lawful solicitation activity.

We find the Respondent's exception lacking in merit for the following reasons. Contrary to the Respondent's contention, the judge acknowledged and accepted the Respondent's evidence of its business necessity for beefing up security in the final weeks before the election by staffing the outside tower during daylight hours. He found, however, that in making these guard assignments, the Respondent did not follow its customary rotation procedure, but rather, singled out and selected those four individuals for more frequent assignments for the obvious purpose of restricting their union activities.

Uncontradicted testimony by Fowler shows that there are about a dozen posts to be filled on the graveyard shift, and consequently that he usually was assigned to each post about once every 2 weeks via the rotation procedure, but that he was assigned to the outside tower on November 4, 12, and 18, 1993. Similarly, Perrigo, who also works the graveyard shift, testified that in November he was assigned to the outside tower at least once a week, and that he was also assigned more frequently to outside vehicles, where he also would be working alone. The Respondent's dayshift records in evidence reveal that Fisher worked the outside tower on November 3, 4, 11, and 17, 1993, whereas he testified that by straight rotation, he would pull that assignment only once every 2 or 3 weeks. McKinney, who works the swing shift, testified that he usually worked the outside tower once every 3 or 4 weeks, but that he was assigned to it on November 3, 4, and 12, 1993, and that two of those times resulted from his being switched from a different listed assignment on the biweekly assignment schedule.[7]

As to the Respondent's argument that assignment to the outside tower has not been shown to inhibit solicitation activity, the uncontroverted testimony indicates otherwise. Thus, Security Director Bennett testified that security officers who attend the 15-minute, unpaid preshift meetings are compensated by an extra 20-minute break during their shift. Uncontroverted employee testimony shows that because of the time required to reach the outside tower and relieve the outgoing officer on duty, persons so assigned are unable to attend the preshift meeting, and thereby also miss out on the extra break.[8] In addition, uncontradicted employee testimony reveals that those who work at the outside tower are also assigned to lunch break at an earlier hour than most of their fellow security officers. Moreover, it is clear that the outside tower, and outside vehicle posts, are solitary ones and therefore less desirable, irrespective of solicitation opportunities.

In sum, in the absence of any credible evidence to justify the assignments of these four individuals, we affirm the judge's conclusion that the Respondent selected McKinney, Fisher, Fowler, and Perrigo for more frequent assignments to those isolated posts for the purpose of interfering with their Section 7 rights. We accordingly adopt the judge's finding of an 8(a)(1) violation based on this conduct.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Reno Hilton Resorts d/b/a Reno Hilton, Reno, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(e) of the Order, relettering the remaining paragraphs accordingly.

''(e) Soliciting employees to campaign against the Union and soliciting employee grievances and impliedly promising to remedy them.''

2. Delete paragraph 2(e) from the Order and substitute the following for paragraph 2(d).

''(d) Post at its Reno, Nevada facility copies of the attached notice marked ''Appendix.''[10] Copies of the notice on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.''

3. Substitute the attached notice for that of the administrative law judge.

[7] The testimony uniformly shows that changes from the listed assignment schedules are occasioned only by employee absences.

[8] The lost breaktime eliminates one opportunity for lawful solicitation. Missing the preshift meeting, attended by supervisors to discuss union-related issues, represents the loss of opportunities both for countering views expressed by supervisors and for coworker contacts.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees with the loss of employment, harsher working conditions, loss of benefits, or other reprisals for engaging in union activities.

WE WILL NOT threaten that employees will lose their chances for promotion because of their union activities.

WE WILL NOT solicit employees to campaign against the Union.

WE WILL NOT solicit employee grievances and impliedly promise to remedy them.

WE WILL NOT promise employees promotions, better working conditions, or other benefits in order to discourage union activities.

WE WILL NOT pay employees or grant benefits in order to discourage union activities.

WE WILL NOT discriminatorily enforce our no-solicitation rule against prounion employees while imposing no restrictions against antiunion employees.

WE WILL NOT conduct surveillance or create the impression of surveillance of our employees' union activities.

WE WILL NOT follow employees or change their assignments in order to restrict their contact with other employees.

WE WILL NOT coercively interrogate employees about their union activities or union sympathies.

WE WILL NOT discharge employees because of their union activites.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer immediate employment to former employee Paul Pedro to the position he would have held, but for our discharge of him.

WE WILL make Pedro whole for any and all losses incurred as a result of our discharge of him, with interest.

WE WILL remove from our files any and all references to the discharge of Pedro and notify him in writing that this has been done and that this personnel action will not be used against him in any way.

RENO HILTON RESORTS D/B/A RENO HILTON

Elaine D. Climpson, Esq., for the General Counsel.
Dawn Patrice Ross, Esq. (Morgan, Lewis & Bockius), of Los Angeles, California, for the Respondent Employer.
Scott A. Brooks, Esq. (Gregory, Moore, Jeakle, Heinen, Ellison & Brooks), of Detroit, Michigan, for the Union Petitioner.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Reno, Nevada, on 9 days between May 3 and June 6, 1994. On December 13, 1993, International Union, United Plant Guard Workers of America (the Union) filed the charge in Case 32–CA–13618 alleging that Reno Hilton Resorts d/b/a Reno Hilton (Respondent or the Employer) committed certain violations of Section 8(a)(3) and (1) of the National Labor Relations Act (the Act). The charge was amended on January 17, 1994. On January 19, 1994, the Regional Director for Region 32 of the National Labor Relations Board issued a complaint and notice of hearing against Respondent alleging that Respondent violated Section 8(a)(3) and (1) of the Act. The complaint was amended on March 11, 1994, and twice during the hearing. Respondent filed timely answers to the complaints, denying all wrongdoing.

On August 13, 1993, the Union filed a petition in Case 32–RC–3777 seeking to represent Respondent's security officers at its hotel in Reno, Nevada. An election was held on November 18, 1993. The results of the election were 34 votes cast for representation by the Union and 51 votes against representation. On November 24, the Union filed timely objections to the election. On December 10, 1993, the Regional Director issued a Supplemental Decision, Report on Objections and notice of hearing. Thereafter, on January 20, 1994, the hearing on the Union's objections was consolidated for hearing with the complaint.

All parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses,[1] and having considered the posthearing briefs of the parties, I make the following

[1] The credibility resolutions have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence or because it was in and of itself incredible and unworthy of believe.

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

Respondent is a Nevada corporation with offices and a principal place of business located in Reno, Nevada, where it is engaged in the operation of a hotel-restaurant-casino complex. During the 12 months prior to issuance of the complaint, Respondent derived gross revenues in excess of $500,000. During the 12 months prior to the complaint, Respondent purchased and received goods and products valued in excess of $5000 directly from sellers or suppliers located outside the State of Nevada. Accordingly, Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues*

In the summer of 1993, Respondent's security officers began their organizing campaign at Respondent's hotel. The hotel and restaurant employees were in the midst of a campaign involving the Carpenters' Union. As stated earlier, on August 13, 1993, the Union filed its representational petition. The complaint alleges that during the union campaign, Respondent through its agents threatened employees, discriminatorily enforced its no-solicitation rule, interrogated employees, and promised benefits in order to dissuade employees from supporting the Union. Further, the complaint alleges that Respondent discharged employee Paul Pedro because of his union activities.

Respondent admits that it paid employees while they were campaigning against the Union, and that it suggested the employees form a professional organization, but denies that it violated the Act. Further, Respondent contends that it discharged Pedro, a probationary employee, for cause without regard to any union activities.

B. *Facts*

The Respondent took over operation of the hotel from the Bally Corporation in August 1992. The security department employees and supervisors employed by Bally were retained when Respondent took over the hotel. Dave Bennett was brought in from another Hilton hotel as the director of security.

The employees began their organizing campaign at Respondent's hotel in June 1993. Security officer Lee Perrigo testified that he passed out union authorization cards in July 1993. Loni McKinney also testified that he passed out union cards in July. After three meetings, the employees chose Loni McKinney, Charles Fisher, Lee Perrigo, and Eric Johnson to be their organizing committee. In August, Johnson was replaced by Terry Fowler. Johnson was applying for a management position at a different Hilton hotel and felt that it was a conflict of interest to be helping the Union while an applicant for a managerial position.

1. Statements by John Gilman

Security officer Charles Fisher testified that as early as July he discussed the Union with John Gilman, assistant security director. While on a personal visit to Fisher's house, Gilman mentioned the union cards that employees were passing out and reminded Fisher that cards could only be distributed on breaks. They discussed the employee organizing committee and Fisher stated that organizing would only be conducted on nonworkingtime, in the cafeteria on breaks and in the locker room on breaks. Gilman added that the employees were putting their jobs in jeopardy and that they should be careful. Gilman admitted that he had general discussions with Fisher about whom to trust or whom to turn to. However, Gilman denied stating that any jobs were in jeopardy or that employees should be careful.

Employee Richard Stauffer testified that during November, Gilman asked him how he would vote if the election was that day. Stauffer answered that he would vote yes. Stauffer requested that the conversation be ''off the record.'' Gilman said that he didn't want the union issue to interfere with their friendship. Stauffer answered that it wouldn't.

Officer Jay VanderPool testified that during November he had several conversations with Gilman about the Union. Gilman reminded VanderPool that the employees had a lot to lose and mentioned a gun program, benefits, and wages. VanderPool had similar conversations with Bob Balentine, administrative assistant to the chief of security, in which Balentine also said the employees had much to lose. Balentine cautioned VanderPool not to ''let them lead you blindly down the path.''

Stauffer testified that Gilman questioned him about his complaints. Stauffer mentioned that when a notice went out for certain training it stated that the training would be on an employee's own time. Based on this notice, Stauffer had not applied for the training. Thereafter, he learned that employees were paid for the time spent in training. Gilman suggested that Stauffer discuss the matter with Lynn Wright, director of human resources. One evening when Stauffer was on duty, Gilman brought Wright to speak with Stauffer. Stauffer discussed this complaint and another complaint he had with Wright. Wright thanked Stauffer for bringing these subjects to her attention. Wright in no way implied that Respondent would remedy these complaints.

Fisher testified that as the November 18 election drew near, Gilman joined him for hours on his post and took breaks in the cafeteria with him. The result of this unprecedented action was that employees did not speak to Fisher about the Union on breaks, the agreed-on time for discussing such matters. Gilman even followed Fisher into the locker room, in spite of the fact that Gilman had no locker. Similarly Gilman joined McKinney on McKinney's breaks during this time period with a similar result. Employees would not speak to McKinney about the Union in Gilman's presence. I credit the testimony of Fisher and McKinney over Gilman's denials. Both McKinney and Fisher impressed me as credible witnesses. Further their testimony was corroborated by other credible employee witnesses.

Fowler further testified that on one occasion, Russ Pagni, supervisor, followed him around for almost an entire 8-hour shift, including breaks. This testimony was corroborated by employees John Hickey and JoJo Brecheen. Respondent admits that Gilman and the managers were present more often so that they could be accessible to the employees. During the last week before the election, the managers and supervisors resided at the hotel.

During the last 2 weeks prior to the election, Fisher and McKinney received assignments in the outside tower, which isolated them somewhat more than other assignments. Both of these union adherents were assigned to the outside tower four times in the 2 weeks prior to the election instead of once or at most twice in a normal rotations. Terry Fowler was assigned to the outside tower three times in the last 2 weeks before the election. This evidence was established by Respondent's own records. Respondent's witnesses established that there was a greater need for an officer in the outside tower after October 22. However, Respondent could not explain the disproportionate number of assignments for union committee members, McKinney, Fisher, Perrigo, and Fowler.

2. The conduct of Russ Pagni

The representation election on the Carpenters' Union's petition was held on November 4, 1994. Paul Pedro, former employee, testified that on the date of the hotel and restaurant employees' election, Russ Pagni, shift supervisor, told Pedro and security officer Donald Stewart that there should be ''no gloating or hard feelings after the election.'' Stewart joked, ''Will he still love us in the morning?'' Pedro said ''What's the big deal? We (the security department) haven't voted yet, so what difference does it make?'' Pagni became angry and ordered Pedro to report to the security office. In the security office, Pagni screamed at Pedro that Pagni took the union business seriously and that Pedro apparently did not. Pagni said that Pedro should change his attitude about the Union because his current attitude could be detrimental to his future employment. Pedro said that he understood and left the office. Pagni denied that he screamed at Pedro or that he discussed the Union. According to Pagni, he merely told Pedro that he did not appreciate Pedro making a joke when Pagni was relaying orders from the chief of security. Reed testified that Pagni did not scream but merely counseled Pagni and that Reed could not remember the subject matter of the conversation. I found Pedro to be the most credible of these three witnesses. Further, his testimony was corroborated by a memorandum he wrote on the day of this conversation. This memorandum was written prior to Pedro's discharge and prior to any motive to fabricate his testimony. On the other hand, I did not find Pagni to be a credible witness. I believe Pagni was simply intent on denying any culpability without regard to the truth of his testimony. Pagni did not explain why Pedro's remark was considered offensive but the remark of Stewart, known to be a union opponent, was not. I further do not credit Reed's testimony that Pagni did not scream at Pedro. I did not find Reed to be a reliable witness.

Employee Todd Harrell testified that in November, he was discussing a union flyer with Donald Stewart, an opponent of the Union, prior to a briefing session. Harrell was arguing the Union's position and Stewart was arguing the Employer's position. Supervisor Pagni sent Harrell, but not Stewart, out of the briefing session and told Harrell to go to Bennett's office. The credited testimony of Harrell and Stauffer establishes that Stewart was equally at fault but no action was taken against Stewart. The credited testimony of Harrell, Stauffer, and employee Richard Newman further shows that the meeting had not yet started and that all the security officers were not yet present. Harrell went to Bennett's office and waited. After Bennett spoke with Pagni, he called in Harrell. Bennett told Harrell that if he had a problem with the Employer's position, he should take it up with Bennett or a supervisor at a more appropriate time. Bennett had no similar conversation with Stewart. Bennett testified that Pagni had reported that Harrell was the aggressor. I find that Harrell and Stewart were equally at fault and that Pagni took this action because of the substance of Harrell's position. To the extent that Pagni testified that Harrell made his comment just as the meeting was to begin, I do not credit his testimony. In this and in other aspects of his testimony, Pagni did not appear to be a credible witness.

3. Employee Eric Johnson

In October, security officer Eric Johnson interviewed at the hotel with Tom Garces, then assigned to be the new director of security for a hotel about to be acquired by Hilton in Hawaii, for a position in management at the hotel in Hawaii. This interview was set up by Bennett, a friend of Garces. Johnson and Garces had a good interview but nothing definite was set up. The following day, Pagni asked Johnson how the interview went and Johnson gave a positive answer. Pagni then said Johnson should think about his ''union duties.'' He told Johnson that the Union might be detrimental to the employee's chances for the Hawaii job and that the Employer might not trust him. Johnson asked what he had to do to change things. Pagni said Johnson should speak against the Union to other security officers and let management see what he was doing. Johnson said that he understood.

Shortly thereafter, Johnson repeated to Bob Balentine, administrative assistant, what Pagni had just told him. Johnson said he would back out of the union activities and notify McKinney and Fisher. Balentine responded, ''actions speak louder than words.'' Johnson contacted Fisher and McKinney and told them it was a conflict of interest to be supporting the Union at one hotel and applying for a management position at another location. Johnson began campaigning against the Union.

Neither Bennett nor Garces had promised Johnson the job in Hawaii. Bennett had merely set up the interview with Garces. Thereafter, Johnson was on his own. Garces and Johnson had a good interview but at the end of the interview, nothing was definite. As it later turned out, Garces did not receive authority to create the position for which he had interviewed Johnson. However, while the job in Hawaii was still an open question, a week prior to the election, Johnson had a conversation with Ward Ruple, Respondent's labor relations consultant.[2]

Ruple first told Johnson that if Johnson told anyone about their conversation he would deny it. Ruple told Johnson that Johnson had a lot of influence with his fellow employees and that Respondent needed Johnson's help. Ruple said, ''[I]f you'll help us, I'll guarantee that job in Hawaii.'' Johnson agreed and they shook hands on the deal.

[2] Ruple had been retained to advise Respondent with respect to the Carpenters' Union's petition regarding the hotel and restaurant employees. He was also retained with respect to the security officers' unit. He advised Respondent's managers and supervisors regarding labor relations rules and regulations and campaign strategy. He had no authority regarding Johnson's application for a management position with Respondent.

Johnson later spoke with Bennett about this conversation. Bennett apologized and said he ''had no idea'' about what Ruple had said. Johnson repeated what Ruple had said to him and said that Ruple didn't even work for Respondent and couldn't guarantee anything. Bennett said that he didn't know what Ruple had said and agreed that Ruple couldn't guarantee anything. Johnson said if Bennett wanted his help all he had to do was ask, he didn't have to make deals or propositions. Bennett said he needed Johnson's help and Johnson agreed to help. That week Johnson spoke to approximately 10 employees in an attempt to persuade them to vote against union representation. Balentine asked Johnson to come in on his days off and campaign against the Union. Balentine said the Employer would pay Johnson for his time. Johnson was paid for approximately 20 hours at the overtime rate for this work. While campaigning against the Union, Johnson frequently violated the Employer's no-solicitation rule by campaigning while on duty or while the employee being solicited was on duty.

While campaigning against the Union, Johnson compared notes with other employees also being paid to campaign against the Union. Included in this group were John Allison, Marcus Johnson, and Robert Ruch. The employees discussed which of their fellow employees were for the Union, against the Union, or ''on the fence.'' Johnson engaged in similar conversations with Supervisors Pagni and Balentine. Johnson testified that certain employees were considered to be ''hard cases'' in favor of the Union and it was decided not to even attempt to solicit their votes. That group included McKinney, Perrigo, Fisher, Pedro, and a few others. In his testimony, Balentine admitted that Johnson told him who was for and against the Union but asserted that Johnson volunteered this information.

4. Bob Balentine

Dale Fowler testified that he had a conversation with Balentine in which Balentine asked what he was trying to prove with the union drive. Fowler said that Balentine should not take the union organizing personally. Balentine answered that he took it very personally and that he felt the drive was aimed at him. Balentine told Fowler that there could be no handbilling unless permitted by hotel policy. Fowler asked if he could answer questions about the Union and Balentine said, ''[Y]ou know what I mean.''

The day before the election, Balentine spoke to Stauffer and explained the election procedure. Balentine showed Stauffer a copy of a ballot and said that Stauffer knew which way to vote. They both laughed according to Stauffer, Balentine had an '''x' mark'' which he placed over the ''no'' box on the ballot. Balentine asked that the employees give Respondent 10 months and if the employees weren't satisfied they should form their own organization. According to Stauffer, Balentine said the Union represented plant guards and didn't know anything about casinos. Balentine admitted showing Stauffer a ballot but denies that he had any ''x'' marked in the no box. Balentine admitted telling Stauffer to give the Employer 10 months and also telling Stauffer that if the employees were unhappy they could form their own in-house association. Fisher also testified that Balentine showed him a sample ballot with an ''x'' in the no box. Balentine said ''[Y]ou know how we want you to vote.''

Fowler testified that when Balentine showed him a sample ballot, the ballot was not marked. Fowler asked if Balentine still took the union matter personally, and expressed the hope that he and Balentine could continue their good relationship. Balentine answered, ''We are going to win.'' Balentine said, ''give us ten months, there are things I want to get done.'' Fowler answered that Balentine was an effective manager and could get things done regardless of union activity. Balentine said give us 10 months and then if you are not satisfied go ahead with an in-house organization. Fowler said, ''If you mean a company controlled union, that's not legal but a quality control group would be different.'' Balentine abruptly left.

Employee JoJo Brecheen testified that just prior to the election Balentine showed her a sample ballot. Balentine had a piece of clear plastic with an x marked on it which he placed on top of the ballot showing Brecheen where to place her x in the no box. Balentine said, ''Place it right here, right here.'' Balentine told her to do the right thing and Brecheen answered that she would do the right thing.

John Hickey testified that just prior to the election, Balentine discussed the Union with him. Balentine asked how Hickey felt about the Union and why he thought a union was necessary. Hickey answered that there were problems on his shift, the graveyard shift. He mentioned that certain officers weren't doing their jobs and that there was a lack of discipline. Hickey told Balentine that employee Pebenito was disrupting the shift, that other officers had complained but that nothing had been done to correct the problem.[3] Balentine said the problems were going to be taken care of. Balentine showed Hickey a copy of a sample ballot and said that Hickey should know how to vote. Balentine testified that he showed a ballot to each employee but that the ballots were not marked. He told employees not to put their names on the ballot but to simply put an x in the proper spot.

Paul Pedro testified that in the middle of November, Balentine approached him while he was on duty. Balentine asked why Pedro had accepted a position with the Hotel. Pedro answered that he needed a job and was impressed with Balentine who had interviewed him. Balentine asked why Pedro, a probationary employee, was so heavily involved with the Union. Pedro admitted that he was a union supporter and mentioned that some of the more senior employees were in favor of the Union. Balentine answered that McKinney had a vengeance against Respondent. Balentine said he hoped Pedro would change his mind and vote against the Union. Pedro asked Balentine, ''My Union views aside, how has my work performance been?'' Balentine replied that he hadn't heard any complaints about Pedro, so that the employee must have been doing a good job. Pedro thanked Balentine and the conversation ended.

Balentine testified that he told Pedro that he was disappointed in the employee's performance and that he ex-

[3] Hickey also discussed complaints about employee Pebenito with Supervisor Van Nostrand 2 weeks prior to the election. Van Nostrand told Hickey that the Union was not necessary and recommended that Hickey vote against the Union. They discussed the graveyard shift and Hickey stated that Pebenito was putting other security officers in jeopardy by not doing his job properly. Van Nostrand said that he was doing the best he could and that management was looking into the matter.

pected a lot more. According to Balentine, he mentioned that Pedro had taken unauthorized breaks and Pedro responded that he would try to do better. I found Pedro to be a more credible witness than Balentine. Further, I note neither Balentine nor any other supervisor noted in Pedro's personnel file or employment history that he took unauthorized breaks. Where their testimony is in conflict, I credit the testimony of Pedro over that of Balentine.

Pedro had one other conversation with Balentine about the Union in which Balentine said that the Union would be nothing but problems. Balentine said that he had been working on many things that would benefit the department but that if the Union got in, all plans would be on hold. Balentine testified that in this conversation Pedro volunteered his views towards the Union. As mentioned above, I credit Pedro's testimony over that of Balentine.

John Allison testified that Balentine told him that Respondent would appreciate it if Allison would speak to other employees about voting against the Union. Allison had already been outspoken in his opposition to the Union. Balentine told Allison he could campaign at any time and with anyone he wanted. He was told to keep a separate log of the off-duty hours he worked and that he would be paid for his time. Allison submitted a slip for 8 hours but was paid for 15 hours of overtime for campaigning against the Union. Respondent's records showed that Allison worked only 4 hours of overtime. Respondent could not explain this discrepancy. The only explanation is that the hours were for campaigning as testified to by Allison. As will be discussed in more detail below, Respondent's payroll records note ''special detail'' next to the overtime worked by the antiunion campaigners. Respondent's supervisors including Bennett denied knowledge of the special details. Obviously, the special details were campaigning against the Union.

Allison testified that he had several conversations with Balentine in which the administrator thanked him for his support of the Employer. On one occasion, Balentine told Allison that the security officer was free to leave his post to campaign against the Union. Allison answered that he could only do so for a short period and then had to return to his post because other officers were relying on him for backup. Allison testified that several of the shift supervisors thanked him for his support. On occasion, Allison and the supervisors would go over lists of employees to discuss which employees should be spoken to. Allison testified that Pagni, Balentine, and Montgomery had and their own lists. To the extent Respondent's supervisors deny knowledge of Allison's activities, their testimony is discredited.

5. Statements by other supervisors

Fisher testified that in July, Dave Bennett, director of security, told Fisher that he had heard of the union card signing and wanted to know if he was at fault. Fisher answered that it had nothing to do with Bennett. Bennett admitted asking Fisher whether he had any responsibility for employees going to a union.

Terry Fowler testified that a week before the election Bennett asked him if they had to go over the rules for campaigning. Fowler explained that he had just made a followup phone call to an employee after discussing the Union while both Fowler and the other employee were on break. Fowler said that, if that was against the rules, he had made a mistake and was sorry. Fowler asked if he was getting a verbal warning and Bennett answered ''no.'' The two then left the office and had coffee together. Bennett admitted that he went over the rules about campaigning with Fowler. He testified that someone had told him that the employee whom Fowler had called had complained.

Employee John McNamara testified that he was called into Bennett's office after distributing union materials in the locker room. Bennett told McNamara that he wanted to make sure the employee understood the rules about distribution of materials. Bennett then proceeded to discuss Respondent's solicitation/distribution policies.

Lee Perrigo testified that during early November, Supervisor Don Van Nostrand spoke to him about the Union while he was on duty. Van Nostrand merely told Perrigo that he felt the Union was not in the employees' best interest and that he felt in the long run the Employer would take better care of the employees.

Stauffer testified that one evening he was told to meet with two supervisors, Denise Baker and Rosa Kelly, from another department. Baker, who supervises audio-visual technicians, represented by another union, told Stauffer that even though her employees were represented by a union, she could terminate employees at anytime.

Jay VanderPool testified that he was approached by Supervisor Roger Reed and questioned about his union views. On one occasion, Reed asked how VanderPool felt about the Union. VanderPool said he didn't want to talk about it and that he would make up his mind later. The matter was dropped. Reed denied having such a conversation. In my view Reed was not attempting to testify to the fact but was merely intent on denying any wrongdoing. I credit VanderPool's testimony over that of Reed. Shortly thereafter, but before the election, VanderPool told Bennett that he did not want anyone trying to convince him how to vote and that he wanted to be left alone. Bennett said that he would try to help. VanderPool was not bothered again.

Jo Jo Brecheen testified that on or about November 9, Supervisor Debbie Montgomery told her to think carefully about the Union. Brecheen answered that she would. Montgomery told Brecheen that the Union couldn't do everything it promised. When Brecheen tried to leave, Montgomery asked that Brecheen come and speak with her after the Employer's mandatory campaign meeting. Montgomery testified that Brecheen brought up the subject of the Union and then refused to talk about it. I found Brecheen to be a credible witness. Further, I find it highly unlikely that Brecheen would bring up the subject of the Union with a supervisor and then refuse to discuss it. I credit Brecheen's testimony over Montgomery's denial.

6. The mandatory meetings

On November 10 and 11, Anthony Santo, vice president and general manager, held mandatory meetings with employees. Each meeting was attended by 10–12 employees. Santo conducted all the meetings and the only other supervisor present was Bennett. Santo said that management had the right to lockout employees if negotiations were at an impasse or if management felt it was necessary because of the possibility of sabotage. Santo said that if the employees went on strike, management could hire permanent replacements. Santo asked whether the Union could offer medical insur-

ance, a thrift plan, free meals, or any of the other benefits the Employer provided. He stated that the Union could not guarantee anything. Santo stated that negotiations could last a year and that wages and benefits would be frozen during negotiations. He said all wages and conditions would be frozen, including the new benefits scheduled for January 1994. He mentioned that negotiations could take a long time. Everything would be negotiable and the employees would more or less start from zero. In at least one of the meetings, Santo said that if the Union won the election there was a likelihood that there would be a lockout during negotiations. He stated that during negotiations the employees couldn't be trusted and a lockout would be considered by the Employer. Santo had heard of cases where there was sabotage or property damage during negotiations. Santo mentioned the decrease in the employees' contribution to medical insurance scheduled for January 1994, and stated that during negotiations the employees would not be eligible for that decrease because during negotiations, wages and all benefits were negotiable.[4] Santo said the Union couldn't guarantee anything. He said that while the Union had a wish list, the Employer also had a wish list. One item on the Employer's wish list was a physical test or physical requirements for employees. He said, ''I would like to see you all run 27 floors.'' The number of 27 floors refers to the height of the outside tower used as a watchpost. Santo told employees that good faith was not a one-way street and that it would not be unreasonable to require employees to climb 27 flights of stairs, in case of fire or another emergency. He said wages could be higher, lower, or remain the same.

Allison testified that prior to the meetings held by Santo he discussed the upcoming meetings with Bennett. Allison mentioned certain of his reasons for opposing the Union and Bennett responded that those were questions that needed to be raised. Bennett testified that Allison offered to ask questions at the Santo meeting and that he told Allison to go ahead and ask the questions. Allison testified that Santo said while the Union would request a wage raise, the Employer would counteroffer with a wage decrease. Allison asked about physical requirements for security officers, knowing that many of the officers were not in good physical condition. Santo responded that a physical agility test might be considered and apparently made his remark about employees having to climb 27 flights of stairs. Allison asked whether the employees who had voted against the Union could be locked out and Santo responded that if there were to be a lockout, all employees in the bargaining unit would be locked out. After the meeting, Bennett thanked Allison for his participation.

7. The no-solicitation rule

The General Counsel alleges that Respondent discriminatorily enforced its no-solicitation and distribution policy. The Employer's no-solicitation rule, published in the employee handbook and posted in employee areas, reads:

> Persons who are not employees of Reno Hilton are not permitted to solicit employees or distribute written material on our property at any time, except as provided below.
>
> No employee may distribute literature in work areas at any time or solicit another employee in any area of the Hotel during his or her working time or during the other employee's working time. No employee may solicit other employees at any time in gaming, meeting convention, exhibit, or recreational areas open to guests and/or the public.
>
> Working time includes all time during which an employee is assigned or engaged in the performance of job duties, but does not include breaks, lunch periods during which time the employee is not assigned to or expected to perform any job duties.
>
> Non-employees who are patrons of restaurants or bars open to the public and off-duty employees may engage in such activities with off-duty employees, provided they act in a non-disruptive manner consistent with the customary use of those areas.
>
> The purpose of these rules is to prevent interference with and disruption of the work of our employees and is to maintain our operation at peak efficiency at all times for the convenience and benefit of our employees, our guests, and the public.

Stauffer testified that he observed employees Bill Nichols, Tony Guiterrez, Rob McLaughlin, and Eric Johnson campaigning against the Union in the cafeteria while they were off duty. Prior to the union campaign, employees were expected to leave within 15 minutes of the end of their shift. Respondent admits that Nichols, Guiterrez, McLaughlin, Johnson, Allison, Pasco, Parrish, and Fields were paid for time spent campaigning against the Union.[5] McLaughlin and Fields were paid while in attendance at union meeting held at McKinney's house. Stauffer testified that McLaughlin spoke, while off duty, to employees who were on duty. Eric Johnson testified that he solicited on-duty employees to vote against the Union while off duty and was paid overtime for doing so. Allison was given free reign to leave his post and campaign against the Union. Perrigo testified that he observed Nichols and Guiterrez, while off duty, talking to on-duty security officers. On one occasion when Perrigo was taking a break, Nichols left his post to talk to Perrigo about the Union. Nichols attempted to persuade Perrigo to vote against the Union. On another occasion, Perrigo observed Nichols speaking against the Union to three on-duty officers while the officers should have been patrolling the casino floor. Fowler testified that on one occasion when Nichols was campaigning against the Union, Nichols told Fowler and another employee that he was getting $18 per hour (the overtime rate) to ''show his loyalty to the company.''

Allison identified Guiterrez, Nichols, McLaughlin, and Pasco as other employees campaigning against the Union. Allison testified that McLaughlin told him about attending the union meeting at McKinney's house, the day before the election. McLaughlin told Allison that he had given a list of the employees at the union meeting to Bennett.[6] The payroll

[4] Respondent had previously announced that the employee contribution for medical insurance would be decreased as of January 1994.

[5] Respondent contends they all volunteered to do so. The evidence shows that only Johnson was recruited to campaign.

[6] McLaughlin, now a supervisor, under Bennett, did not testify at the hearing. Respondent did not make a hearsay objection to the testimony that McLaughlin told Allison that he had listed the initials

records show that McLaughlin worked two shifts that day and was on the timeclock while attending the meeting. Employee Misty Fields was also paid for her time spent at this meeting. McKinney testified that he observed McLaughlin's note pad and that McLaughlin had listed the initials of every one at the meeting. Bennett denied that McLaughlin was sent to the union meeting or that McLaughlin gave him a report concerning the meeting. McLaughlin was paid for attending the meeting and was allowed to leave the hotel without clocking out. Bennett denied giving special treatment to prounion employees but they were paid overtime and permitted to violate the no-solicitation rule.

8. The discharge of Paul Pedro

Pedro was hired as a security officer on August 2, 1993. As a new employee, he had a probationary period of 4 months. During his first 3 weeks, Pedro was assigned to three security officers as training officers. For the first week, Pedro was assigned to George Pierovich. Pierovich showed Pedro where schedules were posted, where the duty posts were and what to look out for. Pierovich took a blank copy of a schedule showing the breaks for the different posts from the file cabinet and made a photocopy so that Pedro could keep a copy in his shirt pocket. Four months later, Pedro obtained a blank copy of the schedule from the same cabinet and made a copy of it. As will be discussed more fully herein, Respondent contends that Pedro was discharged, in part, for entering this file cabinet without permission.

As discussed above, Pedro was considered one of the ''hard cases'' in favor of the Union. In October, Pedro told Supervisor Reed that he was going to a union meeting to learn more about the Union. Reed responded that the union business had caused trouble between employees and that a lot of people might get hurt. Shortly, thereafter Pedro began wearing a union pin on his tie clasp at work. As previously mentioned he was threatened by Pagni that if he didn't take the union business seriously, it would adversely affect his employment. Before the election, Balentine asked why Pedro was so heavily involved in the Union and pointed out that Pedro was still on probation.

On the evening of December 2, Pedro was called into Bennett's office and was discharged by Bennett. Bennett asked if Pedro had been chewing gum on the casino floor. Pedro answered that he had not done so since he had been warned by Montgomery 3 months earlier. Bennett then stated that Acting Supervisor Boekhout had caught Pedro going through a cabinet file. Pedro answered that he was merely getting a copy of the relief schedule and that he had been taught during training to obtain schedules from the file drawer. Pedro showed Bennett the schedule but Bennett answered that he did not need to see it. Bennett said that none of the supervisors were recommending Pedro for continued employment and that Pedro was terminated. Pedro asked what he should do next and Gilman went with him to process the discharge. Gilman told Pedro that he did not know that Pedro was going to be discharged. Pedro asked whether it was because of the Union but Gilman did not respond.

On November 27, Pedro had opened a file draw to obtain a copy of a blank schedule to copy and keep in his shirt pocket. Lee Boekhout, a security officer acting as supervisor for that shift, came upon Pedro while Pedro was searching the draw for the right file. Boekhout became angry and told Pedro that it was Reed's file drawer and Pedro shouldn't be going through it. Pedro received no warning over this incident. Boekhout mentioned this event to Pagni and Pagni told Boekhout that Respondent might want a written report. The next day, Montgomery asked Boekhout for a report and Boekhout wrote a report about the incident. Boekhout admitted that employees sometimes go to the file for schedules, aspirin, or bandaids. He testified, however, that employees should first seek permission to do so.

Bennett testified that he discharged Pedro because he did not have the proper respect towards supervision. Bennett testified that this determination was based on the written recommendations of Montgomery, Pagni, and Boekhout. Montgomery's warnings were months old. They concerned two incidents where Montgomery warned Pedro about smacking his chewing gum while on duty. Pedro did not chew gum at work after the second warning. The notation of these warnings was not made in Pedro's personnel file but rather on a single sheet of paper maintained by Montgomery. Montgomery denied that Bennett spoke to her about Pedro's termination.

Pagni's warning was tainted by union considerations. He had warned Pedro because Pedro did not have the ''proper attitude'' about the Union and he threatened Pedro that if Pedro's attitude did not change, Pedro's employment would be jeopardized.

Missing from Bennett's decision on Pedro is any recommendation from Supervisor Reed who was Pedro's supervisor for the last 2-1/2 months of Pedro's employment.[7] Bennett could not remember whether he talked to Reed, Pedro's then supervisor. Reed testified at the hearing but was not questioned regarding Pedro's discharge. As to the Boekhout incident, credible evidence shows that Pedro's training officer and other employees used the file cabinet for bandaids, aspirin, and schedules. Boekhout had not decided to write about this incident until it was suggested by Pagni whose motives are questionable. Moreover, Bennett did not even bother to look when Pedro attempted to show him what he had taken from the file cabinet. Balentine admitted to Pedro, less than 3 weeks before the discharge, that absent union considerations, there were no complaints about Pedro and that Pedro was doing a good job.

Lynn Wright, human resources director, testified that she must approve all discharges, even those involving probationary employees. She admitted that she would not have approved this discharge had Pedro not been a probationary em-

of everyone at the meeting. In the absence of an objection from the party against whom the evidence is offered, hearsay is admissible and becomes part of the record. See *Alvin J. Bart*, 236 NLRB 242, 243 (1978).

More importantly, since McLaughlin was being paid for his time at the meeting and for campaigning against the Union, his remarks to Allison appear to be made within the scope of his agency and, therefore, an admission binding on Respondent under Rule 801 (d)(2)(D) of the Federal Rules of Evidence. See *Marlandt v. Wild Candid Survival & Research Center*, 588 F.2d 626 (8th Cir. 1978). See also *Williams Services*, 302 NLRB 492, 504 (1991); *Dentech Corp*., 294 NLRB 924, 925–926 (1989).

[7] After Pedro's training period he was given a written evaluation by each of his training officers. These reports were inexplicably missing from Pedro's personnel file.

ployee. Had Pedro passed his probationary period, Wright would have ordered progressive discipline rather than discharge.

On September 4, after a report of an unauthorized entry into a room, Montgomery spoke to Pedro about the proper reporting of such an incident. However, Montgomery did not view this as discipline. Further, it was Pagni, who was later promoted to supervisor, not Pedro who had not followed the proper procedure for reporting the incident to Montgomery. Although Respondent offered this evidence in its defense, it does not appear that Bennett relied on this incident in terminating Pedro.

9. The alleged unlawful raises

At the hearing, the General Counsel amended the complaint, to allege that certain wage increases were granted during the union campaign in order to interfere with the election process. When Respondent took over the hotel from its predecessor in August 1992, it froze wages. It undertook wage surveys in order to have a wage structure in place for all employees by July 1, 1993. In fact, this occurred by August 1993 and all hotel employees were given wage increases retroactive to July 1. Eight security officers were scheduled to receive substantial raises, under the predecessor's pay scale, on their 1 year anniversary dates which would have been shortly after the takeover. However, because of the wage freeze they did not receive these raises. When the wage freeze was lifted they were given raises but these raises were substantially less than those promised by the predecessor employer. Further, Respondent had raised the minimum wage rate for starting employees. Thus, while these eight employees received raises, they were now earning the same amount as a security officer with only 7 months' seniority, although they had almost 2 years' seniority. Gilman was given authority to correct this situation and slot the employees in the wage scale. These raises were approved by Respondent's human resources department and the general manager of the hotel. Similar adjustments were made for other employees in other job categories and other departments. The raises were granted in September, retroactive to July 1. Gilman testified that he explained the raises to each of the eight employees involved. Although there is some conflicting testimony, I credit Gilman on this point.

Employee Richard Newman testified that he asked about the raise due on his anniversary date and was told by Bennett that the raise could not be allowed because of the union campaign. Bennett denied ever saying that the raise would be denied. Bennett claimed he told Newman that he would get back to him. Newman responded that this was an automatic raise and that the union campaign should not interfere with such a raise. After a meeting with a personnel manager, Newman was told that he would receive his wage increase, after the election but retroactive to his anniversary date. The personnel manager explained that Respondent was being careful because it did not want to have an unfair labor practice charge filed against it. Newman was one of the employees that previously received an increase so that he would be slotted above new hires.

C. *Analysis and Conclusions*

1. The wage increases

It is well settled that, in deciding whether to grant benefits while a representation election is pending, an employer should act as if no union were in the picture. *Centre Engineering*, 253 NLRB 419, 421 (1980). The Board does not automatically find grants of benefits during an organizational campaign to be unlawful, but it presumes that such action will be objectionable ''unless the Employer establishes that the timing of the action was governed by factors other than the pendency of the election.'' *American Sunroof Corp*., 248 NLRB 748 (1980); *Honolulu Sporting Goods*, 239 NLRB 1277 (1979).

Applying these principles to the instant case, I find that Respondent lawfully granted wage increases to the security officers who were earning the equivalent of Respondent's starting rate. It appears that Respondent was studying the wage structure from the time it took over the hotel in August 1992, with the intent of having a structure in place by July 1993. The consultants had been hired and the process begun prior to any union activity and, thus, for reasons other than the pendency of the union campaign. The wage increases to all employees were granted and made retroactive to July 1, just as planned in the fall of 1992. After the raises were granted, some inequities were brought to Respondent's attention. The increases at issue here were given so that the employees who lost out on raises due to the takeover were not earning the same as recent hires. Similar adjustments were made regarding nonbargaining unit employees. I find that Respondent did, in fact, act as if no union were in the picture. Accordingly, I shall recommend that this allegation of the amended complaint be dismissed.

2. The alleged surveillance

I have credited the testimony of McKinney, Hickey, and Allison that McLaughlin engaged in surveillance of employees attending a union meeting at McKinney's home the day before the election. The evidence shows that McLaughlin took notes and recorded who attended the meeting. I find the evidence sufficient to hold Respondent responsible for this conduct. Having employed McLaughlin to campaign against the Union and attend the meeting at McKinney's house, Respondent should be held responsible for McLaughlin's conduct during this employment. Respondent had led its security officers to believe that McLaughlin was acting on its behalf and with its approval. See *Advanced Mining Group*, 260 NLRB 486 fn. 3 (1982), enfd. mem. 701 F.2d 221 (D.C. Cir. 1983).

The credible evidence shows that, prior to the election, Gilman followed McKinney around while the employee was on duty and on break. The inference is that by doing so, Gilman inhibited employees from discussing the union with McKinney. Similarly, Pagni followed Fowler on one shift. Again, for that shift employees did not ask Fowler about the Union, even on breaks.

In a parallel tactic, Fisher, Fowler, McKinney, and Perrigo were assigned to the outside tower to inhibit conversations with fellow officers. I find the number of such assignments to the union organizing committee members to be more than

coincidence. I draw the inference the assignments were meant to minimize their contacts with fellow employees. Although in the last month prior to the election Respondent did need more security at that post, the inordinate number of assignments to the union organizers was never explained. I find that Respondent violated Section 8(a)(1) by following the union activists and assigning them to the outside tower in order to minimize their contacts with fellow employees prior to the election. *Heartland of Lansing Nursing Home*, 307 NLRB 152, 163 (1992). This conduct was clearly designed to discourage union activities by inhibiting union solicitations permitted under the no-solicitation rule.

3. Payments to employees to work against the Union

It is undisputed that Respondent paid employees Allison, Eric Johnson, Guiterrez, Pasco, Parrish, Fields, Marcus Johnson, Nichols, and McLaughlin to campaign against the Union. These employees were permitted to earn overtime pay, apparently as much as they wanted, by campaigning against the Union. Such conduct tends to demonstrate to employees the Employer's ability to make it more economically advantageous to oppose the Union than to favor it. Accordingly, I find Respondent paid the employees to campaign against the Union to encourage opposition to the Union and to discourage union activities in violation of Section 8(a)(1). Such a payment or bribe to work against the Union should be treated as a serious interference with Section 7 rights.

The credible evidence establishes that Ruple first told Johnson that if Johnson told anyone about their conversation he would deny it. Ruple told Johnson that Johnson had a lot of influence with his fellow employees and that Respondent needed Johnson's help. Ruple said, '''if you'll help I'll guarantee that job in Hawaii.'' Johnson agreed and they shook hands on the deal. I find that Respondent, through Ruple, its labor consultant, violated Section 8(a)(1) by this unlawful promise of a benefit. Respondent placed Ruple in a position where employees would reasonably believe he spoke on behalf of management, particularly regarding employment matters. Further, I do not find Bennett's apologies for Ruple's conduct to be sufficient repudiation of that conduct. Bennett stated that he did not know what Ruple was going to say and that Ruple could not guarantee anything. However, Bennett went on to ask for Johnson's help. At no time did Bennett give Johnson assurances that the employee was free to decline to work against the Union.

4. The alleged threats by Pagni, Gilman, and Balentine

I have credited Pedro's testimony that he was told by Supervisor Pagni that he should take union matters seriously, that he should change his attitude about the Union and that his present attitude could be detrimental to his continued employment. I find that such statements constitute threats of retaliation against union activities in violation of Section 8(a)(1). *Heartland of Lansing Nursing Home*, 307 NLRB 152 (1992).

I have credited Johnson's testimony that Pagni told Johnson that the Union might be detrimental to the employee's chances for the Hawaii job and that the Employer might not trust him. Johnson asked what he had to do to change things. Pagni said Johnson should speak against the Union to other security officers and let management see what he was doing. Johnson said that he understood. This threat was reinforced by Balentine's statement to Johnson that actions speak louder than words. I find that by such conduct Pagni and Balentine violated Section 8(a)(1) of the Act. *Fort Wayne Foundry Corp*., 296 NLRB 127 (1989); *Southwire Co*., 282 NLRB 916, 918 (1987).

I have also credited the testimony of Harrell and Stauffer that Pagni expelled Harrell from a briefing session because Harrell was arguing the Union's position. Employee Stewart, arguing the Employer's position, was not expelled. The credited testimony establishes that the meeting had not yet started, and that if Harrell was at fault, Stewart was equally at fault. This action was clearly in retaliation for Harrell's expression of prounion views. Similarly, Pagni gave Pedro a verbal warning allegedly for not taking an order seriously and took no action regarding Stewart who was at least equally at fault.

Balentine told Stauffer that the employees should give Respondent 10 months and if the employees weren't satisfied they should form their own organization. According to Stauffer, Balentine said the Union represented plant guards and didn't know anything about casinos. Balentine admitted telling Stauffer to give the Employer 10 months and also telling Stauffer that if the employees were unhappy they could form their own in-house association. The day before the election, Fowler asked if Balentine still took the union matter personally, and expressed the hope that he and Balentine could continue their good relationship. Balentine answered, ''We are going to win.'' Balentine said ''give us ten months, there are things I want to get done.'' Fowler answered that Balentine was an effective manager and could get things done regardless of union activity. Balentine said give us 10 months and then if you are not satisfied go ahead with an in-house organization. Fowler said, ''If you mean a company controlled union, that's not legal but a quality control group would be different.'' Balentine abruptly left. I find an implied promise of benefit if the employees would give Respondent 10 months without union representation *Marshalltown Trowel Co*., 293 NLRB 693 (1989).

5. The unlawful interrogations

Balentine asked why Pedro had accepted a position with the hotel. Pedro answered that he needed a job and was impressed with Balentine who had interviewed him. Balentine asked why Pedro was so heavily involved with the Union. Pedro admitted that he was a union supporter and mentioned that some of the more senior employees were in favor of the Union. Balentine answered that McKinney had a vengeance against Respondent. Balentine said he hoped Pedro would change his mind and vote against the Union. I find no legitimate basis for asking these questions and find that the questions were intended to impress upon Pedro his vulnerability as a probationary employee. The fact that Pedro was an open union supporter does not render permissible coercive questioning by a managerial employee. *Atlantic Forest Products*, 282 NLRB 855 (1987). Balentine had the power to affect Pedro's livelihood and reinforced that fact in an attempt to persuade Pedro to change his position regarding the Union. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act. *Yerger Trucking*, 307 NLRB 567 (1992).

Gilman on several occasions questioned Fisher as to why the employees sought out the Union and what were their de-

mands. Gilman asked why the employees were unhappy. Gilman said the Employer would not forget and that ''the company would not let it die'' after the election. Gilman told Fisher that jobs were in jeopardy and that Fisher should be careful. Fisher mentioned that employees were worried about job security, many were at an age where obtaining another job would be difficult. Bennet also questioned Fisher as to why the employees sought out the Union. Fisher explained that employees were concerned about job security and mentioned that Nevada was a right-to-work State. Bennett wanted to know if he was at fault. Fisher answered that it had nothing to do with Bennett.

Balentine asked how Hickey felt about the Union and why he thought a union was necessary. Hickey answered that there were problems on his shift, the graveyard shift. He mentioned that certain officers weren't doing their jobs and that there was a lack of discipline. Hickey told Balentine that employee Pebenito was disrupting the shift, that other officers had complained, but that nothing had been done to correct the problem. Balentine said the problems were going to be taken care of. Balentine showed Hickey a copy of a sample ballot and said that Hickey should know how to vote.

Stauffer testified that during November, Gilman asked him how he would vote if the election was that day. Stauffer answered that he would vote yes. Gilman said that he didn't want it to interfere with their friendship. Stauffer answered that it wouldn't. In the context of their friendship and their agreement that this conversation was off the record, I find that the discussion was not coercive and, therefore, did not violate Section 8(a)(1) of the Act.

Fowler testified that he had one conversation with Balentine in which Balentine asked what he was trying to prove with the union drive. Fowler said that Balentine should not take the union organizing personally. Balentine answered that he took it very personally and that he felt the drive was aimed at him. Balentine told Fowler that there could be no handbilling unless permitted by hotel policy. Fowler asked if he could answer questions about the Union and Balentine said, ''you know what I mean.'' Although Fowler was a known union committee member this questioning served no lawful purpose and was made coercive by Balentine's statements that he took the matter personally and that he felt the union drive was aimed at him. The questioning was juxtaposed with conduct designed to undermine the Union and was not accompanied by assurances against reprisals or any showing of a valid purpose. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act. *Establishment Industries*, 284 NLRB 121 (1987).

6. Enforcement of the no-solicitation rule

A valid no-solicitation rule may be found unlawful if it is enforced in a discriminatory manner. *Lawson Co*., 267 NLRB 463 (1983); *Hammary Mfg. Corp*., 265 NLRB 57 (1982); *St. Vincent's Hospital*, 265 NLRB 38 (1982). In the instant case, Respondent's valid no-solicitation rule was enforced by restricting prounion solicitations to nonworking-times and areas but placing no such restrictions on the antiunion campaigning. The evidence shows that prounion employees were reminded, by posting and personally, of the no-solicitation rule while Eric Johnson and Allison, were given free reign to campaign against the Union. Allison was specifically told to leave his post to campaign against the Union. The evidence further shows that employees Pasco, Guiterrez, Nichols, McLaughlin, and Fields openly violated the no-solicitation rule in campaigning against the Union. To the extent Respondent's supervisors denied knowledge of the violations of the no-solicitation rule, their testimony is rejected as unworthy of belief. The actions by the paid solicitors were open and notorious. By denying knowledge of these activities, Respondent's supervisors severely undermined their credibility. Accordingly, I find that by allowing the antiunion campaigners to violate the no-solicitation rule, Respondent discriminatorily enforced its valid rule in violation of Section 8(a)(1) of the Act. *Blue Bird Body Co*., 251 NLRB 1481, 1485 (1980); *Ernst Home Centers*, 308 NLRB 848 (1992).

7. The mandatory employee meetings

Respondent contends that Santo's remarks to the employees at the mandatory meetings were privileged by Section 8(c) of the Act which provides:

> Expressing any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

However, an employer's rights under Section 8(c) cannot outweigh the rights of employees granted under Section 7 of the Act. Thus, the Supreme Court in *NLRB v. Gissel Packing Co*., 395 U.S. 575, 617–619, (1969), stated:

> [An employer] may even make a prediction as to the precise effect he believes unionization will have on his company. In such a case however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization. See *Textile Workers v. Darlington Mfg. Co*., 380 U.S. 263, 274 fn. 20 (1965). If there is any implication that an employer may or may not take actions solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment. We therefore agree with the court below that ''[c]onveyance of the employer's belief, even though sincere, that unionization will or may result in the closing of the plant is not a statement of fact unless, which is most improbable, eventuality of closing is capable of proof.'' 397 F.2d 157, 160. As stated elsewhere, an employer is free only to tell ''what he reasonably believes will be likely economic consequences on unionization that are outside his control,'' and not ''threats of economic reprisals to be taken solely on his own volition.'' *NLRB v. River Togs*, 382 F.2d 198, 202 (2d Cir. 1967).

Applying these principles, I find that Respondent did not violate the Act by truthfully informing employees that they could be permanently replaced in the event of a strike. *Eagle*

Comtronics, 263 NLRB 515 (1982). Similarly, Santo's statements about a possible lockout if required by security reasons did not violate the Act. Obviously Santo's explanation to employees that in the case of a lockout, employees would be treated the same, regardless of union sympathies, was consistent with the law. Santo's statements concerning bargaining from scratch were clarified that the parties would be engaged in the give and take of negotiations. He indicated that as a result of bargaining the employees' benefit package could be greater, less, or remain the same as their current package. Accordingly, I find that Santo's statements were not violative of the Act. See *Taylor-Dunn Mfg. Co*., 252 NLRB 799, 800 (1980), enfd. 810 F.2d 638 (9th Cir. 1982).

However, Santo's statements that the employees would not receive the scheduled reduction in the health plan contribution was not privileged by Section 8(c). The undisputed facts show that the employee health insurance contribution was scheduled for implementation in January 1994. The employees were told that this benefit would be frozen along with wages and other benefits.

As mentioned earlier, the Board's general rule is that an employer's legal duty during a preelection campaign period is to proceed with the granting of benefits, just as it would have done had the Union not been on the scene. See, e.g., *American Telecommunications Corp*., 249 NLRB 1135 (1980). Thus, if an employer withholds wage increases or accrued benefits because of union activities, and so advises employees, it violates the Act. *Liberty House Nursing Home*, 236 NLRB 50 (1978). However, where employees are told expected benefits are to be deferred pending the outcome of an election in order to avoid the appearance of election interference, the Board will not find a violation. *Truss-Span Co.*, 236 NLRB 50 (1978).

Applying these principles to the facts of the instant case, the evidence indicates that the reduction in the employees' contribution to the health insurance had been previously announced to take effect in January 1994. By telling employees that this benefit would be frozen, Respondent was telling employees that it was withholding a benefit if the employees chose the Union as their bargaining representative. If this benefit was to be frozen, it should be frozen at the level it would be absent the union activity. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act.

Moreover, Santo's statements that he wished or would demand that employees be able to climb 27 flights of stairs appears to be a threat of more stringent working conditions if the employees chose union representation. *Optica Lee Borinquen*, 307 NLRB 705 (1992). Respondent had never before required a physical abilities test and nothing had prevented Respondent from placing one in effect. Santo's statement did not indicate that this physical requirement was a business necessity but rather the Employer's response to union demands. The employees would reasonably understand the physical requirement to be a reprisal for selecting the Union as their representative.

8. The discharge of Paul Pedro

In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a ''motivating factor'' in the employer's decision. Upon such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Corp*., 462 U.S. 393, 399–403 (1983).

The evidence shows that Respondent became aware of Pedro's preference for the Union in early November. Pedro wore a union pin to work. Further, Pedro was in the group of union supporters that were considered hard cases and not worth attempting to persuade to vote against the Union. Pagni gave Pedro a screaming verbal warning because he made a remark implying that the Union might win the election. Pagni threatened Pedro that his attitude about the Union could be detrimental to his continued employment. I have found that this warning was given to harass Pedro because of his prounion stance. The antiunion employee who had made a facetious remark was not counseled.

Shortly before the election, Balentine asked why Pedro, a probationary employee, was so heavily involved in the Union. Balentine tried unsuccessfully to persuade Pedro to vote against the Union. Most important, Balentine admitted that absent his union views, Pedro was doing a good job and that Balentine had not received any complaints about Pedro.

This conduct toward Pedro took place in the context of numerous and serious unfair labor practices. In addition to the threats directed at Pedro, were the threat by Gilman that Respondent would not forget the union matter after the election and the threats by Pagni and Balentine to Eric Johnson that his chances for the Hawaii job would be diminished by his union activities. Although the Union had lost the election, the Union had already filed timely objections to the election just 2 weeks prior to the discharge. Threats to eliminate the employees' source of livelihood have a devastating and lingering effect on employees. *Milgo Industrial*, 202 NLRB 1196, 1200 (1973), enfd. mem. 497 F.2d 919 (2d Cir. 1974). An inference may be drawn from the animus behind such threats, which the discharge would gratify, that the animus was the true reason for the discharge. *General Thermo*, 250 NLRB 1260, 1261 (1980); *Best Products Co*., 236 NLRB 1024, 1026 (1978). Loss of employment, frequently referred to as the ''capital punishment'' of the workplace, has been long recognized as the type of action which would demonstrate most sharply the power of the employer over its employees. *White Plains Lincoln Mercury*, 288 NLRB 1133, 1139 (1988). Further, Bennett admitted that he relied, in part, on the warning given by Pagni in deciding to discharge Pedro. Having found that Pagni's warning was unlawfully motivated, I find that Respondent's reliance upon it supports the General Counsel's prima facie case.

Respondent argues that it had no knowledge of Pedro's activities. The evidence is clearly the opposite. Pagni, Reed, and Balentine all had knowledge of Pedro's prounion position. Pedro was among the group of ''hard cases'' from whom Respondent did not even bother to solicit votes. Allison and Eric Johnson discussed this with the supervisors and other employees campaigning against the Union. The activities, statements, and knowledge of Respondent's supervisors are properly attributed to Respondent. *Pinkerton's, Inc*., 295 NLRB 538 (1989). Accordingly, I draw the inference that

Bennett and Wright knew that Pedro had spoken out in favor of the Union.

Based on the company knowledge of Pedro's union sympathies, the animus expressed against the Union, the timing of the discharge after the objections, the lack of prior warnings, and the failure to give Pedro an opportunity to deny or explain the complaints, the failure to discuss the matter with his supervisor, the admission by Balentine, and the taint concerning Pagni's warning, I find that the General Counsel has established a convincing prima facie case of discrimination.[8]

The burden shifts to Respondent to establish that the same action would have taken place in the absence of the employee's protected conduct. Here, General Counsel's strong prima facie case makes Respondent's burden substantial. See *Eddylean Chocolate Co*., 301 NLRB 887 (1991). The evidence shows that absent the union activities, the supervisors did not complain to Balentine and that Balentine believed Pedro was doing a good job. Bennett testified that he relied on information from Supervisor Montgomery. However, Montgomery had not supervised Pedro for 3 months. Bennett did not consult Reed who had supervised Pedro during the employee's last 3 months of employment. If Bennett was really concerned with Pedro's performance he would have consulted with the employee's supervisor. Bennett relied on information from Pagni which has been found to be illegally motivated. Because Pagni's report about Pedro's conduct on November 4 was discriminatorily motivated, Respondent cannot premise its discharge of Pedro on this incident. Further, the failure to give Pedro the opportunity to explain or deny Boekhout's complaint buttresses the inference of unlawful motivation. I also note that Boekhout did not file a report on this incident until after Pagni suggested that he do so. Again, Pagni's animus against Pedro's union views casts doubt on his motivation. Finally, it buttresses the General Counsel's case that Gilman told Pedro that he did not know of the discharge and that Gilman did not answer when Pedro asked if it had to do with the Union. Clearly, if the discharge was based on job performance, Gilman would have so informed Pedro.

In sum, I find that Respondent's defense is not sufficient to overcome the strong prima facie case. Accordingly, I find that Respondent discharged Pedro because of his union activities. I, therefore, find that Respondent violated Section 8(a)(3) and (1) of the Act.

9. The representation proceeding

Having concluded that Respondent, between the date of the petition and the date of the election, engaged in numerous violations of Section 8(a)(1) including threatening employees with the loss of employment, I find that Respondent's conduct affected the results of the election. Further, while objections to the election were pending, Respondent discharged employee Paul Pedro in order to discourage its employees' union activities. Such conduct constitutes grounds for setting aside the election. *American Safety Equipment*, 234 NLRB 501 (1978); *Dayton Tire & Rubber*, 234 NLRB 504 (1978). I, therefore, recommend that the election be set aside.

[8] There is substantial evidence that security officer Pebenito had a far worse employment record than Pedro. Pebenito had put guests and other officers in jeopardy but was not terminated. Many of the security officers had complained about Pebenito's misconduct. However, the majority of Pebenito's mistakes occurred shortly after the employee passed his probationary period. Thus, I do not rely on the disparate treatment of Pebenito in deciding the issue of Pedro's discharge.

REMEDY

Having found Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action to effectuate the purposes and policies of the Act.

I shall recommend that Respondent offer Paul Pedro full and immediate reinstatement to the position he held prior to his unlawful discharge. Further Respondent shall be directed to make Pedro whole for any and all loss of earnings and other rights, benefits and emoluments of employment he may have suffered by reason of Respondent's discrimination against him, with interest. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987); see also *Florida Steel Corp*., 231 NLRB 651 (1977), and *Isis Plumbing Co*., 139 NLRB 716 (1962).

Respondent shall also be required to expunge any and all references to its discharge of Pedro from its files and notify Pedro in writing that this has been done and that the discharge will not be the basis for any adverse action against him in the future. *Sterling Sugars*, 261 NLRB 472 (1982).

The General Counsel citing *Sambo's Restaurants*, 247 NLRB 777 (1980), seeks a special remedy requiring John Hughes president of Respondent to read the notice to employees, the mailing of notices to employees and special access to Respondent's hotel so that the Union may have additional access to employees. I do not believe an order requiring the reading of the notice or access to the hotel is necessary. However, I believe certain portions of the Sambo's remedy are applicable here.

I find a broad cease-and-desist order is appropriate in this case in view of Respondent's numerous and egregious violations of the Act which continued after the election with the discharge of Paul Pedro. *Hickmott Foods*, 242 NLRB 1359 (1979); *Sambo's Restaurants*, 247 NLRB 777 (1980). I shall further recommend the following additional affirmative remedies to ensure that if the question of union representation is again placed before the employees they will be able to voice a free choice: (1) In addition to posting at its Reno, Nevada facility copies of the notice marked ''Appendix,'' Respondent shall mail a copy of the notice to each individual current employee at his or her home address and to all employees on the payroll at the time the unfair labor practices were committed, and include a copy in appropriate company publications; and (2) Respondent shall supply the Union, upon request made within 1 year of the date of the Board's Decision and Order, the names and addresses of its current employees. See *Sambo's Restaurants*, supra at 777–778.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by threatening employees with the loss of employment, harsher working conditions, loss of benefits or other reprisals for engaging in union activities, threatening employees that they would lose their chances for promotion because of their union activities, promising promotions and better working conditions to discourage union activities, granting employees benefits in order to discourage union activities, discriminatorily enforcing its no-solicitation rules against campaigning for the Union while placing no restrictions on campaigning against the Union, conducting surveillance of its employees' union activities, following prounion employees and assigning them to outside posts in order to restrict their contact with other employees, and interrogating employees about their union activities or union sympathies.

4. Respondent violated Section 8(a)(3) and (1) of the Act by discharging employee Paul Pedro because of his union activities.

5. By the conduct set forth above, Respondent has illegally interfered with the representation election conducted by the Board on November 18, 1993.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, Reno Hilton Resorts d/b/a Reno Hilton, Reno, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with the loss of employment, harsher working conditions, loss of benefits, or other reprisals for engaging in union activities.

(b) Threatening that employees will lose their chances for promotion because of their union activities.

(c) Promising employees promotions, better working conditions or other benefits in order to discourage union activities.

(d) Paying employees or granting benefits in order to discourage union activities.

(e) Discriminatorily enforcing its no-solicitation rule against prounion employees while imposing no restrictions against antiunion employees.

(f) Conducting surveillance or creating the impression of surveillance of its employees' union activities.

(g) Following employees or changing their assignments in order to restrict their contact with other employees.

(h) Coercively interrogating employees about their union activities or union sympathies.

(i) Discharging employees because of their union activities.

(j) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer immediate employment to former employee Paul Pedro to the position he would have held, but for Respondent's wrongful discharge of him.

(b) Make whole Pedro for any and all losses incurred as a result of Respondent's unlawful discharge of him, with interest, as provided in the remedy section of this decision.

(c) Remove from its files any and all references to the discharge of Pedro and notify him in writing that this has been done and that the fact of the discharge will not be used against him in any future personnel actions.

(d) Mail a copy of the attached notice marked ''Appendix''[10] to each and every security department bargaining unit employee at his or her home address, post copies at its location in Reno, Nevada, and include a copy in appropriate company publications. Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by Respondent's authorized representative, shall be mailed by Respondent to each and every employee working at its Reno, Nevada location on the date on which such notice is mailed, as well as each and every security department bargaining unit employee who worked at that location during the period of Respondent's unfair labor practices, and additional copies shall be posted by Respondent immediately upon receipt and maintained by it for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure the notices are not altered, defaced, or covered by, any other material.

(e) Upon request of the Union made within 1 year of the issuance of the Order, without delay make available to the Union a list of names and addresses of all security department employees employed at the time of the request.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the Regional Director for Region 32 set aside the representation election in Case 32–RC–3777 and conduct a second election.

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''